

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Colin Gardner	Team: Squad #11	CCRB Case #: 201508123	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 08/20/2015 11:15 AM	Location of Incident: In front of the Autozone at 975 Pennsylvania Avenue	Precinct: 75	18 Mo. SOL 2/20/2017	EO SOL 2/20/2017	
Date/Time CV Reported Fri, 09/25/2015 11:02 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 09/25/2015 11:02 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM John Mitchell	20192	947260	PSA 2
2. POM Jonathan Rivera	06577	949550	PSA 2
3. POM Edwin Exilhomme	12740	945187	PSA 2

Officer(s)	Allegation	Investigator Recommendation
A.POM John Mitchell	Abuse: PO John Mitchell stopped § 87(2)(b) and an individual.	
B.POM Jonathan Rivera	Abuse: PO Jonathan Rivera stopped § 87(2)(b) and an individual.	
C.POM Edwin Exilhomme	Abuse: PO Edwin Exilhomme stopped § 87(2)(b) and an individual.	
D.POM Jonathan Rivera	Force: PO Jonathan Rivera used physical force against § 87(2)(b)	
E.POM Edwin Exilhomme	Force: PO Edwin Exilhomme used physical force against § 87(2)(b)	
F.POM John Mitchell	Abuse: PO John Mitchell searched an individual.	
G.POM John Mitchell	Discourtesy: PO John Mitchell spoke discourteously to § 87(2)(b)	
H.POM John Mitchell	Abuse: PO John Mitchell searched § 87(2)(b)	
I.POM John Mitchell	Discourtesy: PO John Mitchell spoke discourteously to § 87(2)(b) and § 87(2)(b)	

Case Summary

On August 20, 2015, at approximately 11:15 a.m., PO John Mitchell, PO Jonathan Rivera, and PO Edwin Exilhomme from the PSA 2 Command were patrolling in an unmarked vehicle near the parking lot in front of the AutoZone at 975 Pennsylvania Avenue in Brooklyn when PO Mitchell exited the vehicle and observed what he believed to be a possible narcotics transaction between § 87(2)(b) and an unidentified individual. PO Rivera and PO Exilhomme, acting on information from PO Mitchell, allegedly grabbed § 87(2)(b) by his wrists and pulled him (**Allegations A, B, C, D, and E**). PO Mitchell allegedly stopped the other individual and searched his wallet, before approaching § 87(2)(b) (**Allegation A continued and Allegation F**). PO Mitchell allegedly told § 87(2)(b) to “Shut the fuck up” (**Allegation G**). PO Mitchell allegedly asked § 87(2)(b) about the contents of his pockets (**Allegation A continued**) and then after § 87(2)(b) removed some of the contents of his pockets, PO Mitchell allegedly reached into § 87(2)(b)'s pockets and removed a cut straw containing cocaine residue, at which point § 87(2)(b) was arrested (**Allegation H**). When § 87(2)(b) and § 87(2)(b) asked why § 87(2)(b) was being arrested, PO Mitchell allegedly told them to “Shut the fuck up” and “Mind your fucking business” (**Allegation I**). § 87(2)(b) was arrested for criminal possession of a controlled substance and given a Desk Appearance Ticket regarding this incident (**see Board Review 6**).

There is no video footage for this incident. The video footage that was obtained from Autozone surveillance cameras did not include footage from the exterior camera at the building's entrance.

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation.
- § 87(2)(b)
- § 87(2)(b) did not file a Notice of Claim regarding this incident (**see Board Review 8**).

Civilian and Officer CCRB Histories

- This was the first CCRB complaint filed by § 87(2)(b) (**see Board Review 7**).
- PO John Mitchell has been a member of the service for 7 years and there are no substantiated CCRB allegations against him.
- PO Jonathan Rivera has been a member of the service for 5 years and there are no substantiated CCRB allegations against him.
- PO Edwin Exilhomme has been a member of the service for 8 years and there are no substantiated CCRB allegations against him.

Findings and Recommendations

Allegation A: Abuse of Authority: PO John Mitchell stopped § 87(2)(b) and § 87(2)(b)

Allegation B: Abuse of Authority: PO Jonathan Rivera stopped § 87(2)(b) and § 87(2)(b)

Allegation C: Abuse of Authority: PO Edwin Exilhomme stopped § 87(2)(b) and § 87(2)(b)

Allegation D: Force: PO Jonathan Rivera used physical force against § 87(2)(b)

Allegation E: PO Edwin Exilhomme used physical force against § 87(2)(b)

Allegation F: Abuse of Authority: PO John Mitchell searched § 87(2)(b)

§ 87(2)(b) stated that he accompanied his friends, § 87(2)(b) and § 87(2)(b) to the AutoZone, located at 975 Pennsylvania Avenue in Brooklyn, to purchase auto supplies for § 87(2)(b)'s Mazda. § 87(2)(b) parked his car on Cozine Avenue, adjacent to the AutoZone parking lot.

There are street mechanics who are not affiliated with the store who wait in the parking lot of the AutoZone and offer to fix cars for a fee if the customers go inside and buy the parts they recommend. They declined the offer of the first street mechanic, an unidentified black male, about 6'0" tall, and 40- to-50-years old. § 87(2)(b) accepted the offer from the second unidentified street mechanic who approached him. § 87(2)(b) and § 87(2)(b) made two trips into the AutoZone for equipment while § 87(2)(b) waited outside, primarily near the vehicle, although he did spend about five minutes inside a deli across the street, purchasing lottery tickets.

When § 87(2)(b) and § 87(2)(b) exited the Autozone the second time, and approached § 87(2)(b) car with § 87(2)(b) an unmarked police car entered the Autozone parking lot from Cozine Avenue.

PO John Mitchell, PO Jonathan Rivera, and PO Edwin Exilhomme, exited the unmarked car and immediately approached the first street mechanic. PO Rivera and PO Exilhomme followed § 87(2)(b) and one of the officers yelled out, "Hey you!" § 87(2)(b) turned around, but was unsure if the officers were speaking to him, and continued towards § 87(2)(b) car. Either PO Rivera or PO Exilhomme yelled out, "Hey, come here!" Simultaneously, PO Rivera and PO Exilhomme grabbed § 87(2)(b) by his wrists and pulled him back into the parking lot towards the first individual.

§ 87(2)(b) asked PO Rivera and PO Exilhomme several times why they had stopped him, but they never answered his question. § 87(2)(b) also told both officers several times that he did not know the first individual. PO Rivera told § 87(2)(b) "Just wait until he's done," referring to PO Mitchell's interaction with the first street mechanic. § 87(2)(b) was primarily focused on what was happening to him, so he did not pay attention to what was happening with the first street mechanic and PO Mitchell. § 87(2)(b) saw PO Mitchell going through the street mechanic's wallet (**Board Review 1**).

All of the officers stated that the area around the AutoZone is known to them through experience and as Conditions officers as a drug-prone location where people hang out to buy and sell narcotics, which is why they were patrolling in that area and paying particular attention to it when they drove by, and why they stopped when they observed many individuals in the parking lot. All of the officers stated that PO Mitchell exited the vehicle to make an observation on foot. All of the officers denied that § 87(2)(b) was pulled in the parking lot.

PO Mitchell stated that he walked into the parking lot in front of the Planet Fitness across the street and pretended to be on his cell phone to blend in. He observed § 87(2)(b) and an unidentified black male engage in a conversation in front of Autozone and saw them make "hand to hand contact" but did not actually see an object or currency being exchanged.

PO Mitchell walked closer to § 87(2)(b) and the other individual for a closer observation without revealing his identity as a police officer. PO Mitchell then called PO Rivera and PO Exilhomme, who were across the street from the AutoZone, on his cell phone and provided a description of § 87(2)(b) and the other individual. Approximately one minute later, PO Rivera and PO Exilhomme converged on § 87(2)(b) and the other individual in the unmarked vehicle, while PO Mitchell converged on foot. PO Mitchell lost sight of § 87(2)(b) for “a few seconds” through the number of parked cars in the Autozone parking lot, and PO Rivera and PO Exilhomme approached the other individual while PO Mitchell approached § 87(2)(b).

PO Mitchell asked § 87(2)(b) if he knew the other individual, and § 87(2)(b) denied that he knew him or spoke to him. This answer raised PO Mitchell’s suspicion level since he observed § 87(2)(b) speaking to the other individual. PO Mitchell then asked § 87(2)(b) about the hand to hand contact he observed § 87(2)(b) have with the other individual. PO Mitchell thought § 87(2)(b) responded by telling PO Mitchell that he was just giving the other individual some change. PO Mitchell also spoke to the other individual who was standing approximately three feet away with PO Rivera and PO Exilhomme. This other individual denied knowing § 87(2)(b) as well.

PO Mitchell did not recall any interaction that occurred between PO Rivera and PO Exilhomme with the other individual. PO Mitchell did not remember if he searched the wallet of this other individual (**Board Review 2**).

PO Rivera stated that § 87(2)(b) and the other individual were “right next to each other” as the officers converged, but the unidentified individual started walking away from § 87(2)(b) as the officers got closer. PO Rivera and PO Exilhomme stood with the unidentified male as PO Mitchell was questioning § 87(2)(b). PO Rivera asked the individual questions to gather information as he was waiting for PO Mitchell’s guidance since it was PO Mitchell’s observation. Some of these questions were “Hey, what’s up? What’s going on here?” The individual stated that he did not know § 87(2)(b) although PO Mitchell observed them both having a conversation and also engaging in the “hand to hand” transaction.

PO Rivera did not remember any specific information that he gathered from this other individual, nor did he remember why this other individual was not ultimately arrested. PO Rivera never obtained the name of the unidentified individual, and he was free to go. PO Rivera did not fill out a 250 report regarding this individual, nor did he see any other officer fill out a 250 report. PO Rivera did not fill out a 250 report because there was no reasonable suspicion and the individual was free to leave. PO Rivera did not believe that he searched the wallet of this unidentified male (**Board Review 3**).

PO Exilhomme stated he spoke with the unidentified individual while PO Mitchell and PO Rivera were talking with § 87(2)(b). PO Exilhomme was interacting with the unidentified individual approximately five to six feet away from PO Mitchell, PO Rivera, and § 87(2)(b). PO Exilhomme asked this individual, “What are you doing in the area?” and “How do you know that gentleman?” PO Exilhomme did not recall the individual’s exact response, but he remembered the individual, who remained calm, explain that § 87(2)(b) was his friend, and they are always there fixing cars. PO Exilhomme interacted with this individual for approximately three minutes, at which point he walked away and was not charged with a crime. PO Exilhomme did not see the

interaction between PO Mitchell and PO Rivera with § 87(2)(b) because he was primarily engaged with the other individual. PO Exilhomme did not search this individual, nor did he see any officer search the individual (**Board Review 4**).

§ 87(2)(g)

Allegation H: Abuse of Authority: PO John Mitchell searched § 87(2)(b)

§ 87(2)(b) stated that after PO Mitchell searched the street mechanic's wallet, PO Mitchell approached § 87(2)(b) PO Rivera and PO Exilhomme. PO Mitchell asked § 87(2)(b) what he had in his pockets, while PO Rivera and PO Exilhomme let go of § 87(2)(b)'s wrists. § 87(2)(b)'s shorts had two front pockets, and no back pockets. § 87(2)(b) was carrying his house keys, ATM card, and money in his pockets.

§ 87(2)(b) patted his own front right pocket and told the officers he had his keys in that pocket, then § 87(2)(b) patted his own left pocket and stated he had his money in that pocket. § 87(2)(b) then removed his keys from his right pocket and the money from his left pocket. After § 87(2)(b) presented PO Mitchell with his belongings, PO Mitchell struck his hand inside both of § 87(2)(b)'s pockets to remove items that remained inside. PO Mitchell pulled out approximately ten lottery tickets and a two-inch plastic straw from § 87(2)(b)'s right pocket. The straw was clear and there were no substances on it. PO Mitchell asked § 87(2)(b) what the straw was for. § 87(2)(b) responded that he used the straw to clean his nails.

PO Mitchell stated that while questioning § 87(2)(b) PO Mitchell observed a "suspicious" bulge in § 87(2)(b)'s front pocket. PO Mitchell did not recall if the bulge was in § 87(2)(b)'s right or left pocket. PO Mitchell did not know exactly what the bulge was, but it looked like "a small square" that could have been the butt of a gun or a knife. In addition to the bulge, § 87(2)(b) was exhibiting a lot "furtive movements" in the area near his front pocket. § 87(2)(b) was moving his hands near his waistband, and PO Mitchell interpreted these movements as a potential threat to his safety due to past experiences. PO Mitchell wanted to be very cautious and was concerned about his own safety and the safety of the other officers since they were in a dangerous neighborhood. PO Mitchell wanted to be certain that § 87(2)(b) did not possess anything that could hurt him, so he is always very cautious when conducting stops.

PO Mitchell then asked § 87(2)(b) “Do you have anything on your person?” § 87(2)(b) then reached into his own pocket and pulled out his cell phone, and PO Mitchell asked again, “Do you have anything else on you?” § 87(2)(b) reached into his pockets again and removed all of its contents, including keys and a small cut straw with white residue on the outside of it, and then § 87(2)(b) put all of the items back into his pockets. PO Mitchell did not recall if he reached into § 87(2)(b) s pockets or not. PO Mitchell asked § 87(2)(b) what the straw was, and § 87(2)(b) responded, “Oh you know that’s from last night, I was partying with my friend; it was his birthday and it’s a little cocaine. I just put these pants back on and came out here for a hot second.” § 87(2)(b) did not tell PO Mitchell that the straw was used to clean his nails. PO Mitchell knew from previous experiences that straws like the one from § 87(2)(b) s pocket were commonly used for snorting cocaine, and § 87(2)(b) s statement confirmed PO Mitchell’s assumption, and he was arrested (**Board Review 2**). PO Mitchell wrote in his memo book that § 87(2)(b) was searched due to a suspicious bulge in his left pocket. § 87(2)(b) was asked to empty his pocket due to safety concerns (cell phone), and was observed with a cut straw commonly used for drug use. The straw had drug residue, and § 87(2)(b) stated it was cocaine and he was partying the night before and he left it in his pants (**Board Review 10**).

Neither PO Rivera nor PO Exilhomme saw § 87(2)(b) empty his pockets or PO Mitchell search § 87(2)(b) PO Rivera stated that because he was focused on his own interactions with the individual, he was unable to describe much of the interaction between § 87(2)(b) and PO Mitchell, although he did recall that eventually § 87(2)(b) mentioned when he was being handcuffed that there was cocaine residue on the straw. PO Exilhomme stated that he did not hear or see any of the interaction with PO Mitchell and § 87(2)(b) because he was focused on the individual.

§ 87(2)(g)

[REDACTED]

Allegation G: Discourtesy: PO John Mitchell spoke discourteously to § 87(2)(b)
Allegation I: Discourtesy: PO John Mitchell spoke discourteously to § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) stated that PO Mitchell told him to, “Shut the fuck up” when he asked PO Mitchell why the officers had stopped him. § 87(2)(b) also stated that PO Mitchell told his friends, § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) to “Shut the fuck up” and “Mind your fucking business” after they asked PO Mitchell why § 87(2)(b) was being arrested. PO Mitchell denied saying any of these phrases to § 87(2)(b) or to § 87(2)(b) s friends. § 87(2)(b) and § 87(2)(b) were uncooperative with providing a sworn statement regarding this incident. § 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

Squad:

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date